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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for implementing in part [Directive 2014/104/EU](#) of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (O.J. No. L 349, 5.12.2014, p.1) (“the Damages Directive”) and for the alignment of the domestic competition regime in the Competition Act 1998 (“the 1998 Act”) with the provisions in the Damages Directive. This Note does not indicate where in United Kingdom law the Directive is already given effect.

The Damages Directive makes certain provisions to harmonise procedural and substantive rules across Member States relating to private actions by persons who have suffered harm caused by an infringement of competition law. Such claims are already heard by the United Kingdom courts and by the Competition Appeal Tribunal (“the Tribunal”), provision for the latter being found in Part 1 of the 1998 Act. These Regulations make provisions for implementing those parts of the Damages Directive so far as it is not already given effect in the laws of the United Kingdom.

Regulation 2 and Schedule 1 insert a new section 47F and Schedule 8A into the 1998 Act. Schedule 8A provides as follows—

- a) Part 1 contains definitions and provisions about interpretation;
- b) Part 2 provides the relevant burdens of proof in relation to claims involving overcharges or underpayments being passed on to indirect purchasers or indirect providers respectively;
- c) Part 3 provides certain conditions under which small and medium-sized enterprises are not liable, alone or jointly, to pay damages;
- d) Part 4 provides a rebuttable presumption that cartels cause harm. It also provides certain conditions under which cartel participants who have been granted immunity from financial penalties under a cartel leniency programme are not liable, alone or jointly, to pay damages. Paragraph 16 makes provision for contribution proceedings between cartel immunity recipients and co-infringers;
- e) Part 5 makes provision for limitation and prescriptive periods;
- f) Part 6 applies certain restrictions on disclosure of cartel leniency statements, settlement submissions, competition authority investigation materials and materials in a competition authority’s file;
- g) Part 7 makes further provision on the use of evidence in Part 6. Paragraph 35 provides that decisions of Member State competition authorities are prima facie evidence of an infringement of competition law;
- h) Part 8 prohibits the court or the Tribunal awarding exemplary damages;
- i) Part 9 makes provision for the effect of consensual settlements on the claim and contribution between co-infringers;
- j) Part 10 sets out the application of Schedule 1.

Regulation 3 and Schedule 2 make minor and consequential amendments and savings to the 1998 Act and other enactments.

Whilst these Regulations implement some provisions of the Damages Directive, other provisions are implemented through rules made by the Civil Procedure Rules Committee, the Scottish Civil

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Statutory Instrument: *The Claims in respect of Loss or Damage arising from Competition  
Infringements (Competition Act 1998 and Other Enactments (Amendment)) Regulations 2017 No. 385*

Justice Council Secretariat, the Northern Ireland Court of Judicature Rules Committee and rules for the Competition Appeal Tribunal.

A full impact assessment of the effect that these Regulations would have on the costs of business and the voluntary sector is published with the Explanatory Memorandum, which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

The transposition note in relation to the implementation of the Damages Directive is also published with the Explanatory Memorandum and available on that website. Copies of these documents are available in the libraries of both Houses of Parliament.